

REMARKS

Introduction

Claims 1 - 12 were originally pending in the PCT application to which this application claims priority. On September 20, 2000, in a paper submitted to the International Preliminary Examining Authority at the European Patent Office, claim 11 was cancelled. Also, claim 12 was canceled by way of a Preliminary Amendment filed April 3, 2001. Claim 13 was added by way of Preliminary Amendment filed July 2, 2004, and Claim 14 was added by way of an Amendment filed November 23, 2004.

The Windscreen Wiper Assembly of the Present Invention

The windscreen wiper of the present invention as defined in independent claim 1 is directed toward a windscreen wiper having an elongate, curved backbone made out of a single, unitary, resiliently flexible beam. A force applying member is connected to the backbone at two spaced apart points. Spacing distance, S , between the points falls within a range between $0.1 \cdot L$ and $0.35 \cdot L$, where L is the total length of the backbone, and both S and L are expressed in millimeters. The curved shape of the backbone, the resiliently flexible material of the backbone, and the disclosed range of S allows the windscreen wiper of the present invention to achieve improved pressure distribution across the length of the wiper.

In another aspect, the present invention as defined in independent claim 2 is directed toward a windscreen wiper having an elongate, curved backbone made out of a single, unitary, resiliently flexible beam. A force applying member is connected to the backbone at two spaced apart points. A ratio, R , of the spacing distance, S , to the total length of the backbone, L , falls within a range between 0.1 and 0.35, where S and L are expressed in the same unit of measure. The curved shape

of the backbone, the resiliently flexible material of the backbone, and the disclosed range of R allows the windscreen wiper of the present invention to achieve improved pressure distribution across the length of the wiper.

In still another aspect, the present invention as defined in independent claim 13 is directed toward a windscreen wiper having an elongate, curved backbone made out of a resiliently flexible material. A force applying member is connected to the backbone at two spaced apart points. Spacing distance, S, between the points falls within a range between $0.15 \cdot L$ and $0.35 \cdot L$, where L is the total length of the backbone, and both S and L are expressed in millimeters. The curved shape of the backbone, the resiliently flexible material of the backbone, and the disclosed range of S allows the windscreen wiper of the present invention to achieve improved pressure distribution across the length of the wiper.

In still another aspect, the present invention as defined in independent claim 14 is directed toward a windscreen wiper having an elongate, curved backbone made out of a single, unitary, resiliently flexible beam. A force applying member is connected to the backbone at two spaced apart points. Spacing distance, S, between the points falls within a range between $0.15 \cdot L$ and $0.35 \cdot L$, where L is the total length of the backbone, and both S and L are expressed in millimeters. At one of the points, the force applying member is connected to the backbone by means of a pin which is received in a longitudinal slot in the backbone so that relative longitudinal and pivotal movement between the pin and the backbone is permitted.

Applicant respectfully submits that independent claims 1, 2, 13 and 14 each recite structure that is not disclosed or suggested by the prior art as will be discussed in greater detail below. Claims 3 – 10 are each ultimately dependent upon claims 1 or 2. Accordingly, applicant respectfully solicits the allowance of the claims pending in this case.

Claim Rejections

Claims 1 – 10 and 13 were rejected under 35 U.S.C. § 103 as being unpatentable over the U.S. Patent No. 5,485,650 to Swanepoel in view of U.S. Patent No. 3,780,395 to Quinlan et al. Although page 5 of the January 31, 2005 Office Action states that this action was made final, the Office Action Summary states that this action is non-final. The Examiner has communicated in a telephone call to applicant's representative that the action is non-final. Applicant respectfully traverses these rejections.

Similar Rejection Made in Previous Office Action Properly Withdrawn

In an August, 23, 2004 Office Action, the Examiner rejected claims 1, 2, and 5 – 10 under 35 U.S.C. § 103(a) as being unpatentable over the Quinlan et al. '395 patent in view of the Swanepoel '650 patent. Applicant responded in a November 23, 2004 amendment by arguing that the rejection was improper because: 1) the wipers shown in the Quinlan et al. '395 patent have dimensions outside the range of claims 1 and 2; 2) measurements taken from the drawings of the Quinlan et al. '395 patent cannot be properly relied upon in support of the rejection; 3) there is no motivation to combine the Quinlan et al. '395 patent with the Swanepoel '650 patent; and 4) the Quinlan et al. '395 patent teaches away from the combination by touting the advantages of a wiper having multiple leaf springs. In the most recent Office Action, the Examiner states that the arguments with respect to the Quinlan et al. '395 patent in view of the Swanepoel '650 patent were considered to be persuasive, and the rejection was withdrawn.

Applicant respectfully submits that the current rejection of claims 1 – 10 and 13 under 35 U.S.C. § 103 based on the Swanepoel '650 patent in view of the Quinlan et al. '395 is essentially the same as the withdrawn rejection made in the August 23, 2004 Office Action (i.e., the rejection of claims 1, 2, and 5 – 10 under 35 U.S.C. § 103(a) based on the Quinlan et al. '395 patent in view of

the Swanepoel '650 patent). Accordingly, applicant respectfully submits that the current rejection is improper for the same reasons presented in applicant's November 23, 2004 amendment. Applicant respectfully submits that those arguments are equally persuasive to the current rejection and respectfully requests that the current rejection be withdrawn.

Measurements from Quinlan Drawings is Improper Basis of Rejection

The Examiner relies on measurements taken from the drawings of Quinlan et al. '395 in support of the rejection of claims 1 – 10 and 13 under 35 U.S.C. § 103. Applicant respectfully submits that the Examiner's measurements are an improper basis for the rejection because the drawings in Quinlan et al. '395 are not to scale and are silent as to dimensions. MPEP § 2125. However, the Examiner states that In re Reynolds, 443 F.2d 384 (C.C.P.A. 1971) "teaches that though the drawings are not to scale, there is some reason for the relationships shown in the drawings and they cannot be regarded as accidental or arbitrary."

Applicant respectfully submits that Reynolds does not apply to the present application. In Reynolds, a claim was rejected under 35 U.S.C. § 112, first paragraph, for insufficient disclosure in the specification of a claim limitation, namely, a "means for preventing an abrupt change in the capacitance characteristic of a capacitor." Id. at 388. The court recognized that the rejection was improper because the claim limitation was inherently disclosed in the drawings. Specifically, one component was shown oriented at an angle with respect to another component, and this orientation would inherently prevent an abrupt change in the capacitance characteristic of a capacitor as claimed. Id. at 389. Applicant respectfully submits that Reynolds does not apply to the present application because the Examiner is *not* relying on drawings that show relative *orientation* between illustrated components.

Instead, the Examiner is relying on length measurements shown in the drawings of the Quinlan et al. '395 patent as the basis of the rejection. The Examiner states that she is "not using the measurements as exact measurement but rather using them to find a ratio." Applicant respectfully submits that using the measurements to find a ratio does not avoid the rule of Hockerson-Halberstadt, Inc. v. Avia Group Int'l, Inc., 222 F.3d 951 (Fed. Cir. 2000), which is directly on point. In that case, the court rejected an argument that the ratio of a width of a groove in relation to the width of fins of a shoe was disclosed in a patent drawing because the application did not disclose that the drawings were to scale and did not include dimensions. In rejecting that argument, the court stated "patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue." Id. at 956. Here, as in Hockerson-Halberstadt, the Examiner has improperly taken measurements of Quinlan et al. '395 patent drawings to find a ratio and has used that ratio as the basis of the rejection of claims 1 – 10 and 13.

Thus, applicant respectfully submits that the Quinlan et al. '395 patent fails to disclose or suggest a force applying member connected to a backbone at two spaced apart points, wherein the spacing distance, S , between the points falls within a range between $0.1 \cdot L$ and $0.35 \cdot L$, where L is the total length of the backbone as claimed in claim 1. Applicant respectfully submits that the Quinlan et al. '395 patent fails to disclose or suggest a force applying member connected to a backbone at two spaced apart points, wherein a ratio, R , of the spacing distance, S , to the total length of the backbone, L , falls within a range between 0.1 and 0.35 as claimed in claim 2. Furthermore, applicant respectfully submits that the Quinlan et al. '395 patent fails to disclose or suggest a force applying member connected to the backbone at two spaced apart points, wherein the spacing distance, S , between the points falls within a range between $0.15 \cdot L$ and $0.35 \cdot L$, where L is the total

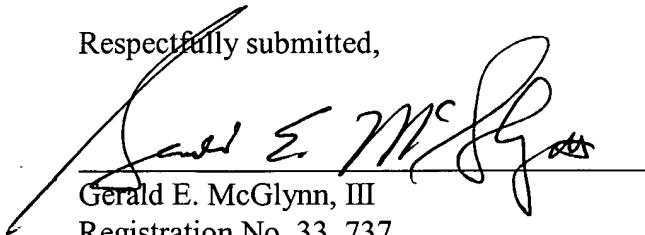
length of the backbone as claimed in claim 13. Claims 3 – 10 are all ultimately dependent upon either independent claim 1 or 2, respectively and add further perfecting limitations. Accordingly, applicant respectfully requests withdrawal of the rejection.

Conclusion

Independent claims 1, 2, 13 and 14 each recite structure that is not disclosed or suggested by the prior art and are patentably distinguishable from the subject matter of the references discussed above. Claims 3 – 10 are all ultimately dependent upon either independent claim 1 or 2, respectively and add further perfecting limitations. Applicant respectfully submits that the prior art references, alone or in combination, do not disclose or suggest the present invention. However, and even if they did, they could only be applied through hindsight after restructuring the disclosures of the prior art in view of the applicant's invention. Accordingly, applicant respectfully solicits the allowance of the claims pending in this case.

If the Examiner has any questions or would like to discuss any of the matters set forth above, the Examiner is encouraged to contact undersigned counsel at the telephone number indicated below.

Respectfully submitted,



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